# UNITED STATES DISTRICT COURT

## **DISTRICT OF NEVADA**

JAMES BATTERSON,

Plaintiff,

v.

BRUCE BANNISTER, et al.

Defendants.

3:07-CV-142-BES-VPC

ORDER

Before the Court is Defendants' Motion for Summary Judgment (#35) filed November 28, 2007. This action was referred to U.S. Magistrate Judge Cooke pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. The Magistrate Judge submitted her Report and Recommendation (#66) on July 7, 2008, recommending that this Court deny Defendants' Motion for Summary Judgment (#35). Defendants filed an Objection to the Recommendation (#46) on July 23, 2008. Plaintiff has not filed a response.

#### I. ANALYSIS

# A. Review of Magistrate Judge's Order

Any party may object to a magistrate judge's case dispositive proposed order, findings, or recommendations. 28 U.S.C. § 636(b)(1)(B); Fed.R.Civ.P. 72(b); LR 74.2. The district court must make a *de novo* determination of those portions of the magistrate judge's report to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. <u>Id.</u> De novo review means the court must consider the matter anew, the same as if it had not been heard before and as if no decision previously had been rendered. <u>Ness v. Commissioner</u>, 954 F.2d 1495, 1497 (9th Cir. 1992).

Thus, although the district court need not hold a de novo hearing, the court's obligation is to arrive at its own independent conclusion about those portions of the magistrate judge's findings or recommendation to which objections are made. <u>United States v. Remsing</u>, 874 F.2d 614, 617 (9th Cir. 1989).

After conducting a *de novo* review of the record, the Court accepts and adopts the Magistrate Judge's recommendation (#45).

## III. CONCLUSION

IT IS HEREBY ORDERED that Defendants' Objection to U.S. Magistrate Judge's Report and Recommendation (#46) is DENIED and the Report and Recommendation (#45) entered by the Magistrate Judge on July 7, 2008 is ADOPTED.

IT IS SO ORDERED.

DATED: This 19<sup>th</sup> day of August, 2008.

UNITED STATES DISTRICT JUDGE